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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Cr.A. No.)) 8 OF 2001

APPELLANT
(IN JAIL)

1. Rakesh alias Kallu
Alias Santosh singh
Aged about 22 years
S/o Bihari Lal Alias
Ramprasad Singh Rajput
R/o Komladongri
Police Station Golmudi
District - Singhbhoomi Bihar

At present R/O Bistopur
behind Natraj Talkies
Singhbhoomi Tatanager BIHAR

2. Kamaljeet singh Alias babu
Singh Aged about 20 years S/o
Amarjeet Singh Caste - Bhajavi
Punjabi R/O Toladongfi
Police Station Golmudi
District - Singhbhoomi BIHAR

VERSUS

RESPONDENT

The State of Chhattisgarh

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE 1973

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 776/2001

Appellant : Sunil Singh alias Sonu

Versus

Respondent : State of Chhattisgarh

Criminal Appeal No. 739/2001

Appellants : Prakash Singh & others

Versus

Respondent : State of Chhattisgarh

Criminal Appeal No. 778/2001

Appellants : Rakesh alias Kallu alias Santosh Singh & another

Versus

Respondent : State of Chhattisgarh

Criminal Appeal No. 992/2001

Appellants : Mahesh & another

Versus

Respondent : State of Chhattisgarh

Criminal Appeal No. 788/2001

Appellant : Raghunath

Versus

Respondent : State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE SHRI V.K. SHRIVASTAVA, J

Agree

Sd/-
V.K.Shrivastava
Judge

POST FOR JUDGMENT ON 21st DECEMBER 2006

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON. SHRI V.K. SHRIVASTAVA &
HON. SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal no. 776/2001

Appellant : Sunil Singh alias Sonu

Versus

Respondent : State of Chhattisgarh

Criminal Appeal no. 739/2001

Appellants : Prakash Singh & others

Versus

Respondent : State of Chhattisgarh

Criminal Appeal no. 778/2001

Appellants : Rakesh alias Kallu alias Santosh Singh & another

Versus

Respondent : State of Chhattisgarh

Criminal Appeal no. 992/2001

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Versus

Respondent : State of Chhattisgarh

Criminal Appeal no. 788/2001

Appellant : Raghunath

Versus

Respondent : State of Chhattisgarh

Present: Shri Abhay Tiwari, Advocate appears on instruction of Smt. Savita Tiwari, Advocate for the appellant in Cr.A.No. 776/2001.
Shri Alok Bakshi with Shri Neeraj Mehta, Advocates for the appellants in Cr.A.No. 739/2001.
Shri Neeraj Mehta, Advocate for the appellants in Cr.A.No. 778/2001.
Shri Alok Bakshi with Shri Viprasen Agrawal, Advocates for the appellants in Cr.A.No. 992/2001.
Shri Anand Gupta, Advocate for the appellant in Cr.A.No. 788/2001.
Shri U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

JUDGMENT
(Delivered on 21.12.2006)

Per Dhirendra Mishra, J

The above criminal appeals are being disposed of by this common judgment as all these appeals arise out of the judgment dated 25.6.2001 passed by First Additional Sessions Judge, Rajnandgaon in S.T.No. 132/98 whereby the learned Additional Sessions Judge after holding the accused/appellants guilty under Sections 364, 365, 506-II and 395 of the Indian Penal Code, sentenced each of them to undergo R.I. for five years and pay a fine of Rs. 1,000/-, R.I. for three years and pay a fine of Rs. 500/-, R.I. for three years and pay a fine of Rs. 500/- and life imprisonment and pay a fine of Rs. 1,000/- respectively and in the event of default of payment of fine to further undergo R.I. for two months for default in payment of Rs. 500/- each in the multiple, respectively. All the sentences were directed to run concurrently.

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2. Case of the prosecution in brief is that on 16.5.1998 a Bus bearing registration No. M.P. 23-J/0409 proceeded from Raipur to Nagpur at about 10.30 p.m. Apart from bus driver Dhanendra Kurve, conductor Kamal Narayan Tiwari, helper Mukesh and 44 passengers were traveling by the bus. 45 minutes past mid night when the bus reached near octroi post some 4 km away from Rajnandgaon, two passengers sitting in the bus went near the driver and directed him to drive the bus slowly on the gun point and others started beating the passengers. The driver was compelled to divert the bus on a *kachcha* road beside the Nala. Thereafter, they asked the driver to take the bus inside the Nala where the bus got jammed. Six persons were inside the bus and 5-6 other persons were already present near the Nala. They started looting the bus and in the process they looted the V.C.P., cassettes, wrist watch of the helper Mukesh, cash of Rs. 4,510/-from the conductor, silver ring, watch and Rs. 250/- from the driver and the luggage of the passengers from the dickey. After completing robbery they took the key of the bus from the driver and locked the passengers and the driver in the bus, deflated the tire of the bus and threatened them not to report. The driver of the bus Dhanendra Kurve lodged a report of the incident at about 1.45 a.m. on 17.5.1998 whereupon Crime No. 253/98 under Section 395 of the IPC and 25 & 27 of the Arms Act was registered. Alert was sounded through the area and boundaries were sealed.

3. During investigation the bus was taken into possession vide Ex.P/5 on 17.5.98. One country-made revolver with four live cartridges, a golden ring, one lack rupees in different denominations and a walkman were taken into possession from Prakash Singh vide Ex.P/21. A slate colour brief case containing Rs. 4,000/- and other looted articles was taken into possession from accused Raghunath vide Ex.P/22. A blue colour bag containing a V.C.P., two pairs golden bangles, one wrist watch etc. was taken into possession from accused Rakesh Kumar vide Ex.P/23. Rs. 4,000/- cash, a wrist watch, golden ring, were taken into possession from Mahesh Kumar Sahu vide Ex.P/24. Rs. 4,000/- cash, one Mangalasutra of gold, silver ring, a Titan watch were taken into possession from accused Munna Kumar Singh vide Ex.P/25. Rs. 4,000/- cash, one pair of golden ear ring, silver ring, anklet, three wrist watches, were taken into possession from accused Sunil Singh @ Sonu vide Ex.P/26. Rs. 4,000 in 100 denominations, golden ring, golden ear ring, silver ring, two wrist watches of different company were taken into possession from Sudhir Singh @ Sunil vide Ex.P/27. Rs. 4,000/-, one wrist watch, one lady's watch, silver ring etc. were taken into possession from Kamaljeet Singh @ Babu vide seizure memo of Ex.P/28. Rs. 4,000/-, one Mangalsutra of gold having seven lockets, silver key ring, HMT wrist watch, one country-made pistol 303 bore with five live cartridges and one calculator, were taken into possession from

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Umesh Singh vide Ex.P/29. Rs. 4,000/- cash, one pair of golden bangles, one silver ornament usually put on around waist, one golden ring, HMT wrist watch and one lady's wrist watch, were taken into possession from accused Pradeep Singh vide Ex.P/30. Rs. 4,000/- cash, golden ring, a golden chain and Titan watch, were taken into possession from accused Jagpal singh vide Ex.P/31. All the above seizures have been effected on 17.5.1998.

4. Test identification of the seized articles was conducted by Shrikant Verma, Executive Magistrate (PW-22) vide Ex.P/6 on 3.6.98, Ex.P/7 on 29.5.98, Ex.P/8 on 20.5.98, Ex.P/9 on 20.5.98, Ex.P/10 on 3.6.98, Ex.P/11 on 20.5.98, Ex.P/12 on 11.6.98 and Ex.P/16 on 20.6.98, where the witnesses identified the articles. Test identification parade was conducted by the Executive Magistrate on 12.6.98 in Sub-jail Rajnandgaon vide Ex.P/1 and P/2 of the accused persons where Kamal Narayan Tiwari, Mukesh Kumar Manikpuri and Dhanendra Kurve identified the accused persons. On the same day identification of the seized V.C.R. was conducted and they identified the same vide Ex.P/3. All the accused persons were arrested on 17.5.98 at about 5 past 17 hours.

5. After completing the investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Rajnandgaon who in turn committed the case to the Court of Sessions Judge,

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Rajnandgaon and the same was received on transfer for trial by the learned Additional Session Judge. Learned Additional Sessions Judge framed charges under Section 364, 365, 395, (27-B), 506-II of the IPC against all the accused persons and in addition to the above charges charge under Section 25 & 27 of the arms Act was also framed against accused/appellants Kamaljeet and Pradeep. The accused/appellants abjured their guilt.

6. Prosecution in order to establish the charge against the accused/appellants examined 34 witnesses in all. Thereafter, statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them in the prosecution case and stated that they are innocent and have been falsely implicated in the crime.

7. However, learned Additional Sessions Judge after hearing learned counsel for the accused/appellants and Additional Public Prosecutor for the State convicted and sentenced the accused as mentioned above.

8. Learned counsel for the accused/appellants submit that conviction of the appellants rests on the test identification parade of Ex.P/1 and Ex.P/2 according to which the appellants were correctly identified by the eyewitnesses Dhanendra Kurve,

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Kamalnarayan Tiwari and Mukesh Kumar. The conviction is further based on the alleged seizure of the looted articles from the custody of the appellants. Learned counsel have assailed the test identification parade on the following grounds:

(i) The test identification parade was conducted on 12.6.98 i.e. almost 25 days after the incident though the appellants were taken into custody on the next day of the incident as is evident from the record, there is no explanation for delay in conducting the test identification parade;

(ii) The accused persons were detained in the police station on the next day where the witnesses of the test identification parade were also present and they had sufficient opportunity to see the accused persons in the police station and in the aforesaid circumstances, the test identification parade looses its significance;

(iii) The incident occurred in the mid night, there is ample evidence on record that at the time of incident the lights in the bus were put off and there was complete darkness in the bus,

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therefore it was not possible for the witnesses to identify the accused persons;

(iv) Except the driver, conductor and the helper of the bus, no other passengers were made to identify the accused persons in the test identification parade;

(v) The description of the accused persons is missing in the First Information Report or in their diary statements and therefore, the identification of the accused persons in the test identification parade cannot be believed.

9. Reliance is placed on the judgments reported in **Air 1987 S.C. 1222** in the matter of **Subash and Shiv Shankar Vs. State of U.P.**, **AIR 1988 SC 345** in the matter of **Hari Nath and another etc. Vs. State of U.P.**, **AIR 1970 SC 1321** in the matter of **Budhsen and another Vs. State of U.P.**, **AIR 2000 SC 160** in the matter of **Rajesh Govind Jagesha Vs. State of Maharashtra**, **AIR 1993 SC 931** in the matter of **Tahir Mohammad and others Vs. State of M.P.** and some other judgments on the same point.

10. It is further contended that in all the seizure memos which were prepared after the alleged seizures from the appellants, Rajulal Gonwane and Pyarelal are common witness of seizure. However, only Pyarelal has been examined by the prosecution

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as PW-29 and he has categorically denied any seizure from the accused persons before him and has stated that for fear of the police persons, he had put his signature in the seizure memos of Ex.P/21 to P/32. The prosecution has not been able to elicit anything in the cross examination of this witness. The other witness of seizure namely Rajulal Gonwane was given up by the prosecution without examination though he was present in the Court at the time of trial. The statement of investigating officer Nasir Badi, Sub-Inspector (PW-32) who effected the seizures, has admitted that the place of seizure has not been described in the seizure memos and he received the information about dacoity through wireless which he recorded in the daily register of Police Station Somni and thereafter he had effected the seizures in Mudipar railway station. However, the seizure memos bear the crime number though he has admitted in paragraph 14 of his statement that he had not gone to police station and had not seen the papers regarding action taken by the Rajnandgaon police station in this regard.

11. Learned counsel for the accused/appellants further submit that in any case the appellants have been convicted under Section 395 of the IPC and sentenced to undergo imprisonment for life, however, considering their young age and the fact that during the incident no injury was caused to any of the persons by the appellants and that they are in jail since

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17.5.1998, their jail sentence under this section may be reduced to the extent they have already undergone.

12. On the other hand, learned counsel for the State/respondent supporting the impugned judgment of the trial Court submits that the incident occurred 45 minutes past mid night on 16th/17th May 1998, the information of this incident was given in the police staion at 1.45 a.m. i.e. after an hour of the incident and thereafter in the morning at about 5.00 a.m. all the accused persons were apprehended by the police along with the articles of the robbery. The accused persons were in the company of the witnesses for about half an hour during the incident in the bus in close proximity and therefore, the witnesses had ample opportunity to see the accused persons. The witnesses have also identified all the accused persons on the dock during trial. The statements of the witnesses of test identification parade are duly corroborated in material particulars by the statements of the passengers of the bus who have also identified the accused persons during trial. Therefore, only the delay in conducting test identification parade, would not discredit the evidence adduced by the prosecution in this regard.

13. Learned counsel for the State placed reliance on the judgments reported in **(2004) 13 SCC 150** in the matter of **Pramod Mandal Vs. State of Bihar**, **(2003) 3 SCC 569** in the

matter of **Anil Kumar Vs. State of U.P.**, **(2002) 4 SCC 475** in the matter of **George Vs. State of Kerala** and the judgment reported in **(2003) 12 SCC 554** in the matter of **Lal Singh and others Vs. State of U.P**.

14. So far as seizure of the robbed articles is concerned, the same was immediately effected in less than 5 hours of the incident when the accused persons were trying to run away with the bounty by train from railway station Mudipar. The evidence of PW-32 Nasib Badi, SHO, P.S. Somani who promptly effected the seizures cannot be disbelieved solely on the ground that the seizure witnesses have turned hostile particularly when the witnesses admit their signatures over the seizure memos. Learned counsel for the State further submits that the accused persons who are admittedly the residents of State of Bihar, were apprehended together from the railway station Mudipar immediately after the incident with the looted articles. In the aforesaid circumstances, the arrest and seizure of the looted articles attains special significance.

15. We have heard learned counsel for the respective parties and have perused the evidence available on record including the impugned judgment of the trial Court.

16. PW-3 Dhanendra Kurve was driver of the bus who has lodged the FIR of Ex.P/4 in the same night at about 1.45 a.m.

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He is also the witness of test identification parade. In his statement before the Court he has stated that he was driver of the bus which was going from Raipur to Nagpur on the date of incident and the journey started at about 10.45 p.m. in the night. Just before Rajnandgaon near Parinala one of the four persons sitting in the cabin behind the seat of the driver, put a *Katta* (country-made revolver) on his stomach and two caught hold of his shoulders. He identified accused Munna Kumar as a persons who put the country-made revolver on his stomach. He has also identified accused Pradeep as a person who grabbed his shoulders. He has further identified accused Umendra Singh as a person who directed him to drive the bus slowly or else he would shoot him. He has further stated that on the instructions of the dacoits who were 5-6 in number in the bus, he took the bus some ½ km away from the road, when the bus got entangled in the river, 5-6 dacoits who were already near the river, started looting the passengers. They also opened the dickey after taking key from the conductor and looted the luggage of the passengers. They also took the V.C.R. installed in the bus and thereafter they locked all the passengers in the bus and asked them not to move or else they would shoot. He has further stated that thereafter he along with 8-10 passengers and Mukesh went to the police station and lodged the report. He has stated that the amount of booking which was with the conductor was also looted by the accused persons. He has

stated that he along with conductor Kamalnarayan, helper Mukesh went to Rajnandgaon jail for identification. He has also proved the identification memos of Ex.P1 and P/2 and has stated that 15-20 persons were put before them in two shifts, out of them they identified 6-6 accused persons in turn and the persons who are present in the Court during trial, are the same persons they had identified. He has further stated that he had also identified the V.C.R., wrist watch and the ring of the conductor and assigned reason for identifying the same. In paragraph 9 of his statement he has denied the suggestion that when the accused persons were brought in the police station they saw them in the police station and denied the presence of the police at the time of identification of the persons and at the time of identification of the articles. In paragraph 15 he has admitted that the lights of the bus were switched off but has stated that whenever the bus stops, lights are put on. He has further stated that the V.C.R. was on at the time of the incident. In the cross-examination this witness has stuck to his statement in chief. The defence has not been able to elicit any thing which makes this witness untrustworthy or unreliable except some insignificant omission and contradiction.

17. PW-1 Mukesh Kumar Manikpur, helper of the bus, who is also the witness of test identification parade, has also stated that while he was standing near the gate of the bus, someone

came from behind and started beating and took out his wrist watch. He identified the accused Sudhir Singh present in the Court as the person who beat him and snatched his wrist watch and has stated that some persons caught hold of Kamalnarayan Tiwari and beat him. It is further stated that the driver tried to put on the light, however, he was not permitted, thereafter two persons in the cabin and two persons from the behind participated in the incident. He has stated that the persons sitting in the cabin were holding *Katta* and three others in the cabin were also holding *Katta* and they took the bus forcibly some 1 km away from the main road. He handed over the key of the bus out of their fear and thereafter these persons present in the bus and other six persons who were present on the place of incident looted the luggage of the passengers from the dickey. They also took out the V.C.R. and cassettes fitted in the bus. After a month he along with Dhanendra Dhurve and conductor Kamalnarayan Tiwari went to the Jail and identified the dacoits vide Ex.P/1 and P/2. Thereafter, they had also gone to the Court and had identified the V.C.R. and his wrist watch vide Ex.P/3. At the time of identification of articles also the driver and conductor were present with him. The V.C.P. was produced in the Court and he identified the same to be the V.C.P. of the bus.

18. PW-2 Kamalnarayan Tiwari, conductor of the bus has corroborated the statements of above two witnesses in material

particulars in his examination-in-chief. He has also identified accused Umendra Singh, Rakesh, Kamaljeet as the persons who participated in the dacoity.

19. Learned counsel for the accused/appellants have drawn our attention to paragraph 5 of the statement of this witness where he has admitted that 12 persons who were brought by the police in the police station were the same persons who were identified by him in the jail and he has also seen the V.C.R. and the cassettes in the police station and argued that all the witnesses had already seen the accused persons in the jail and therefore any identification by these witnesses conducted after 25 days of the incident, looses its significance.

20. In the matter of Takir Mohammad (supra) is also a case of bus dacoity. In the aforesaid case, the dacoits who had covered their faces stopped the bus and looted the bus on gun point after switching off the lights of the bus and in the aforesaid circumstances, the test identification parade was disbelieved.

21. In the matter of Rajesh Govind Jogesha (supra) the accused of that case were tried for murder and the identification of the accused persons was based on the test identification parade. However, the veracity of the test identification parade was disbelieved on the ground that in the FIR it was mentioned that the accused was having beard and long hair at the time of

commission of the crime, however, at the time of test identification parade the accused had removed the same, it also appears that no other person who had long beard or long hair was included in the parade and the witness had identified the accused at the first sight. In these circumstances, the Hon'ble Supreme Court considering the inordinate delay in conducting the test identification parade had doubted the veracity of the identification and extended the benefit of doubt.

22. In the matter of Budhsen and another (supra) while considering the significance of test identification parade it has been held that the identification of the accused persons at the trial for the first time is inherently of a very weak character, therefore, in order to carry conviction test identification parade is conducted to strengthen the trustworthiness of the evidence and it is accordingly considered a safe rule of prudence to look for corroboration of the sworn testimony of the witness in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. In this judgment also the scope of exception has been underlined and where the Court is impressed by a particular witness it has been held that the conviction may rest without any other corroboration. Considering the facts of that case the accused persons were prosecuted under Sections 302 and 109/34 of the IPC and the Supreme Court disbelieved the test identification parade.

23. In the matter of Hari Nath and another (supra) the accused persons of that case were convicted under Section 396 of the IPC. It appears from the facts of that case that the accused of that case were the residents of the villages in the close vicinity and PW-1 who was a student of the same institution expressed ignorance of any familiarity with the identity of the accused persons and under these circumstances, the Supreme Court considering the omission to disclose their identity in the FIR expressed reasonable doubt about their complicity in the crime and for these reasons the veracity of the test identification parade was doubted and the accused persons were given the benefit of doubt. Whereas no such factual scenario exists in the present case.

24. In the matter of Subash and Shiv Shankar (supra) the appellants of that case were convicted under Section 302/34 of the IPC. In that case the test identification parade was conducted after four months, the accused had distinct features which were not mentioned in the FIR and the diary statements and the conviction was based only on such identification also considering the antedating of the FIR, the conviction of the accused based on T.I. parade was set aside.

25. The Supreme Court in the latest judgment in the matter of Pramod Mandal (supra) has categorically held that delay of one

month in holding test identification parade cannot be a sole reason to reject the evidence of identification particularly when the defence failed to impute any motive to the prosecution for delay in holding the TI parade. It has been held that there is no fixed rule as regards the period within which the TI parade must be held or with regard to number of the identifying witnesses. It has been further observed that the identification of the accused in the Court corroborated by the test identification parade by the same prosecution witness particularly when the dacotiy took place for a period of 25 minutes in the house, the genuineness or truthfulness of the testimony are held cannot be doubted.

26. In the recent judgment in matter of Anil Kumar (supra) the Apex Court has held that delay of 47 days in conducting test identification parade will not make the identification doubtful particularly when the younger brother aged 10 years who came to save the witness was killed in the process and this witness had a clear look of the assailants.

27. In the matter of Lal Singh and others (supra) which is a case relating to train robbery, the Hon'ble Supreme Court has held thus:

> *"Where witnesses had ample opportunity to see the accused persons at the time of robbery and they correctly identified the accused in TI parade,*

which was not shown to be suffering from any irregularity and prosecution established recovery of the looted articles, namely, currency notes from the possession of the accused and those notes had been duly identified, held, conviction based on the evidence of identification corroborated by evidence of recovery of the looted articles was justified – Mere delay in holding TI parade, in the circumstances of the case was inconsequential.

28. In the matter of George Vs. State of Kerala (supra) the Hon'ble Apex Court considering the circumstantial evidence of recovery of articles of robbery soon after the incident which were duly identified by the witnesses as belonging to the deceased from the possession of the accused persons in less than 24 hours of the incident, has held that it would lead to inference under Section 114 Illustration (a) of the Evidence Act that the appellant had himself committed the robbery, an offence punishable under Section 392 of the IPC.

29. In the light of the above principles laid down by the Hon'ble Apex Court, we are of the considered opinion that the statements of the witnesses PW-1, PW-2 and PW-3 before whom TI parade was conducted are corroborated by the prompt recovery of the robbed articles from the accused persons within few hours of the incident. The seizure of the articles from the accused persons cannot be disbelieved solely on the ground that the witnesses of seizure have not supported the prosecution

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case and have turned hostile particularly considering the statement of Nasir Badi (PW-32), SHO of P.S. Somani who has seized the looted articles and proved the seizure memos after giving detailed account of the same. The seized articles have been duly identified in the identification memos of Ex.P/3 and Exs.P/6 to P/13. This witness has been elaborately cross-examined at length by the defence but the defence has not been able to impeach the credibility of this witness. Looking to the fact that the seizures were promptly effected by the police officer who learnt about the incident only on wireless and apprehended the accused persons from the railway station along with the looted articles, this Court is satisfied with the seizures effected by this witness and finds it wholly reliable. Apart from this, the passengers namely PW-4 Smt. Sandhya Ghode, PW-5 Vilas Ghode, PW-6 D.L. Nema, PW-7Farzana Begam, PW-8 Tabassum, PW-9 Vilas Kolhe, PW-10 R.K. Bajpai, PW-11 Smt. Snehlata Bajpai, PW-12 Sanjay Moreshwar Vadedwar, PW-13 Nilima Bhoskar, PW-14 Sanjay Bhoskar, PW-15 Sandeep Sahai, PW-17 Nandlal, PW-18 Mulla Tahir Ali, PW-19 Prabhat Kumar Rawat, PW-20 Narayan and PW-21 Devesh Suryavanshi, have corroborated the statements of PW-1, PW-2 and PW-3 in material particulars and out of them PW-9 Vilas Kolhe has identified accused Girish, PW-10 R.K. Bajpai identified Jagpal Singh, PW-11 Smt. Snehlata Bajpai identified accused Rakesh , PW-14 Sanjay Bhoskar identified accused Umesh and PW-19

Prabhat Kumar Rawat identified accused Jagpal Singh as the persons who participated in the dacoity. All these witnesses are independent eyewitnesses, they have supported the witnesses of test identification parade in material particulars and they have also identified their looted articles. The test identification of the accused persons and the seized articles is also established by the evidence of PW-22 Shrikant Verma, Executive Magistrate who conducted the test identification parade.

30. On the basis of aforesaid discussion, we're of the considered opinion that the prosecution has been able to establish the charges against each of the accused/appellants beyond reasonable doubt and the Court below has not committed any illegality or infirmity in holding the accused/appellants guilty under aforesaid sections.

31. However, taking into consideration the fact that all the accused/appellants were young boys less than 33 years of age except Accused Jagpal at the time of incident, all the appeals are partly allowed. Jail sentence imposed upon all the appellants under Section 395 of the IPC is modified and each of them is sentenced to undergo rigorous imprisonment for 10 years under Section 395 of the IPC in place of life imprisonment. Rest of the sentences mentioned in paragraph 1 of this judgment shall remain as it is.

Sd/-
V.K.Shrivastava
Judge

Sd/-
DHIRENDRA MISHRA
Judge